

FILED

APR - 8 2008

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY DEPUTY

1 KAREN P. HEWITT  
United States Attorney  
2 CARLA J. BRESSLER  
Assistant United States Attorney  
3 California State Bar No. 134886  
United States Attorney's Office  
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7 Attorneys for Plaintiff  
UNITED STATES OF AMERICA

**UNITED STATES DISTRICT COURT**

SOUTHERN DISTRICT OF CALIFORNIA

08CR1080-JAH

17       **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES  
18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and  
19 Carla J. Bressler, Assistant United States Attorney, and defendant  
20 JAMES MICHAEL MOONEYHAM, by and through and with the advice and consent of defense  
21 counsel, Linda Lopez, Federal Defenders of San Diego, Inc., that:

22       1.     Defendant agrees to execute this stipulation on or before the first preliminary hearing  
23 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,  
24 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead  
25 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count  
26 of Bringing in Aliens Without Presentation and Aiding and Abetting, in violation of 8 U.S.C.  
27 § 1324(a)(2)(B)(iii) and 18 U.S.C. § 2.

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CJB:es:3/25/08

1           2. Defendant acknowledges receipt of a plea agreement in this case and agrees to  
2 provide the signed, original plea agreement to the Government not later than five business days  
3 before the disposition date set by the Court.

4           3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or  
5 before April 23, 2008.

6           4. The material witness, Maria Elena Antonio-Hernandez, in this case:

7           a. Is an alien with no lawful right to enter or remain in the United States;  
8           b. Entered or attempted to enter the United States illegally on or about  
9 March 22, 2008;

10           c. Was found in a vehicle driven by codefendant, SHANE ALAN CALHOUN,  
11 with JAMES MICHAEL MOONEYHAM as the passenger, at the Otay Mesa, California Port of  
12 Entry (POE) and that defendant knew or acted in reckless disregard of the fact that she was an alien  
13 with no lawful right to enter or remain in the United States;

14           d. Was having others pay on her behalf \$3,400 to others to be brought into the  
15 United States illegally and/or transported illegally to her destination therein; and,

16           e. May be released and remanded immediately to the Department of Homeland  
17 Security for return to her country of origin.

18           5. After the material witnesses are ordered released by the Court pursuant to this  
19 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any  
20 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any  
21 proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral  
22 attack, that:

23           a. The stipulated facts set forth in paragraph 4 above shall be admitted as  
24 substantive evidence;

25           b. The United States may elicit hearsay testimony from arresting agents  
26 regarding any statements made by the material witness(es) provided in discovery, and such

1 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements  
2 against interest of (an) unavailable witness(es); and,

3                   c.         Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),  
4 “testimonial” hearsay statements are not admissible against a defendant unless defendant confronted  
5 and cross-examined the witness(es) who made the “testimonial” hearsay statements, defendant  
6 waives the right to confront and cross-examine the material witness(es) in this case.

7       6. By signing this stipulation and joint motion, defendant certifies that defendant has  
8 read it (or that it has been read to defendant in defendant's native language). Defendant certifies  
9 further that defendant has discussed the terms of this stipulation and joint motion with defense  
10 counsel and fully understands its meaning and effect.

Based on the foregoing, the parties jointly move the stipulation into evidence and for the immediate release and remand of the above-named material witness(es) to the Department of Homeland Security for return to her country of origin.

14 It is STIPULATED AND AGREED this date.

Respectfully submitted,

16  
17 Dated: 4/8/08.  
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KAREN P. HEWITT  
United States Attorney  
  
CARLA J. BRESSLER  


19 Assistant United States Attorney  
20  
21 Dated: 4/17/08.  
22  
LINDA LOPEZ  
Defense Counsel for Mooneyham

23  
24 Dated: 4/7/08. James Mooneyham  
25 JAMES MICHAEL MOONEYHAM  
Defendant

28 Stipulation of Fact and Joint Motion for Release of  
Material Witness(es) And Order Thereon in  
United States v. James Michael Mooneyham (2)

## ORDER

2           Upon joint application and motion of the parties, and for good cause shown,  
3           **THE STIPULATION** is admitted into evidence, and,  
4           **IT IS ORDERED** that the above-named material witness(es) be released and remanded  
5 forthwith to the Department of Homeland Security for return to her country of origin.

**SO ORDERED.**

Dated: 4/8/08

W. McDonald  
United States Magistrate Judge